# WAI WAH ENTERPRISES & EASTERN WATCH CO. PTE. LTD. v. CHINA AIRLINES LTD.

[O.C.J. (Lai Kew Chai J.) September 23, 1985]

[Singapore – Suit No. 2904 of 1981]

*Sale of Goods – Carriage by air – Loss of goods – Whether carrier liable – No value declared in appropriate box – Effect of – English Carriage by Air Act, 1961, art. 22(2)(a) of Schedule.*

*Agency – Whether defendants on the facts had become plaintiffs' agents.*

*Carriers – Carriage by air – "Special declaration of interest in delivery at destination" – Meaning of – English Carriage by Air Act, 1961, art. 22(2)(a) of Schedule.*

On October 13, 1980, the first plaintiffs, a firm in Hong Kong dealing in clocks and watches, delivered to the defendants' agents at Hong Kong Airport, one wooden case of watches with an invoice value of FOB Hong Kong of HK$98,440 for carriage by air to Singapore and for delivery to the second plaintiffs as the consignees. The defendants carried the goods to Singapore where it was found that watches to the value of HK$89,740 were stolen. The plaintiffs claimed the sum of HK$89,740, interest and costs against the defendants. The defendants sought to limit their liability by relying on Article 22(2)(a) of the Schedule to the English Carriage by Air Act, 1961, applicable by virtue of s.5(1) of the Civil Law Act, Cap. 30. It was agreed that if the defendants were entitled to invoke the said article, the defendants would only be liable to pay S$253.74.

The court was to decide (a) whether the first plaintiffs, as the consignors, had made "a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires" within the meaning of Article 22(2)(a) of the Schedule to the English Carriage by Air Act, 1961; (b) whether the defendants on the facts had become an agent of the plaintiffs in the matter of making out the Air Waybill in question and whether the defendants as such agents were negligent.

**Held**: (1) the first plaintiffs had elected to ship at the ordinary freightrate and had not chosen to pay the additional freightrate for valuable cargo, in which case the defendants as the carrier would have been automatically covered for insurance to the full value of the cargo. The first plaintiffs and those taking title from them must bear the consequences of losses together with the benefit of shipping at a lower rate;

(2) in this case a blank declaration in the appropriate box, notwithstanding the value stated in an invoice in a sealed envelope which was not seen by any employee of the defendants, cannot possibly amount to "a special declaration of interest in delivery at destination";

(3) as a fact the supplementary sum was not paid or offered to be paid in this case;

(4) there was no relationship of a principal and agent in this case;

(5) the plaintiffs should pay the defendants the costs of the proceedings calculated for work done and the defendants may be reimbursed for expenses incurred. The defendants will be paid out of $253.74 by way of set-off against the costs due to them.

*Case referred to:*

(1) *Westminster Bank* v. *Imperial Airways Ltd.* [1936] 2 All E.R. 890.

CIVIL SUIT.

*Liu Yuen Ming* for both plaintiffs.

*Robert Wee* for the defendants.

*Cur. Adv. Vult.*

**Lai Kew Chai J.**: On October 13, 1980, the first plaintiffs, a firm in Hong Kong dealing in clocks and watches, delivered to the agents of the defendants in the Hong Kong Airport, one wooden case of watches with an invoice value of FOB Hong Kong of HK$98,440.00 for carriage by air to Singapore and for delivery to the second plaintiffs as the consignees. The defendants carried the goods to Singapore where it was found that 47 pieces of Longines watches and 26 pieces of Girard-Perregaux watches of the value of HK$89,740.00 were stolen. The plaintiffs now claim the sum of HK$89,740.00, interest and costs against the defendants.

At the trial, the defendants sought to limit their liability by relying on article 22(2)(a) of the Schedule to the English Carriage by Air Act, 1961 which is part of the laws of Singapore by virtue of section 5(1) of the Civil Law Act (Cap. 30). It was agreed that if the defendants were entitled to invoke the said article, the defendants would only be liable to pay S$253.74.

Under this aspect of the case, I have to decide whether the first plaintiffs, as the consignors, had made "a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires" within the meaning of the said article.

The other issues in this case are whether the defendants on the facts in this case had become an agent of the plaintiffs in the matter of making out the Air Waybill in question and whether the defendants as such agents were negligent.

I now turn to the facts in this case. According to the manager of the first plaintiffs, Mun Ping Wei, the first plaintiffs had been consigning goods

through the defendants out of Hong Kong since 1975 and had up to the consignment in question sent some 180 consignments by air. This loss was their first experience. On the morning of October 13, 1980 Mun received an order from the second plaintiffs for 150 pieces of 'MD' watches, 47 pieces of Longines watches and 26 pieces of Girard-Perregaux watches for delivery by air to the second plaintiffs in Singapore. Mun immediately phoned the defendants' office in Hong Kong, booked the space and got from them the number of the Air Waybill which was 297-1973 0911. He then instructed his colleague, Ng Kei Leung, in the usual way to prepare and pack the goods, make out the invoice and also prepare the "Shipper's Letter of Instructions" out of a stack of such blank forms supplied by the defendants' office in Hong Kong. After Ng had done all these, he was instructed to deliver the goods to the defendants together with two other consignments which they were also airfreighting to the second plaintiffs that day.

Ng Kei Leung, the shipping clerk of the first plaintiffs, said in evidence that he had packed the goods and had also made out the invoice and the Shipper's Letter of Instructions in the form supplied by the defendants. A copy of the Shipper's Letter of Instructions was tendered in evidence. Apart from stating the Airbill number obtained earlier by Mun, the nature of the goods, and that the freight and other charges were to be on "collect" basis, he did not fill in the column headed by the words "Declared Value" nor the sub-columns designated "For carriage" or designated "For customs". However, two small crosses and two capital crosses were typed in over each other within the sub-column designated "For customs". As they appeared to be of the same prints similar to other crosses in the form, I am prepared to infer and find that Ng had typed in the four crosses in question. In making this inference, I find that the defendants' cargo agent who had attended to Ng at the counter, one Tam Chi Chie, had not typed in the two sets of crosses.

At the Hong Kong airport, Ng went to the Hong Kong Air Cargo Terminal Limited ("HACTL"), the agents of the defendants, and handed them the three consignments to weigh and measure, and for which HACTL issued him the receipts. HACTL kept the three consignments in a security cage. From there Ng went to the defendants' counter where he was attended to by Tam Chi Chie. He handed to Tam the relevant HACTL receipt, the first plaintiffs' letter of instructions and a sealed envelope containing an invoice. All three documents related to the consignment in question. Tam did not open the envelope and did not look at the invoice. Tam did not ask Ng to pay any supplemental sum. Although Ng said in evidence that he would have paid the additional sum, if asked, I doubt if he would have done that as freight was on a "collect" basis, that is the consignment was on an FOB Hong Kong basis which meant that the second plaintiffs would have been liable to pay for it.

According to Tam, Ng handed to him the HACTL receipt, the first plaintiffs' letter of instructions and a sealed envelope containing the invoice. It was addressed to the second plaintiffs as the consignees. Tam copied the particulars from the first plaintiffs' letter of instructions by typing them into the Air Waybill. He calculated the air freight payable on the basis of the weight and dimensions stated in the HACTL receipt. Before typing out the Air Waybill, Tam had to obtain further information from the first plaintiffs' letter of instructions to determine whether the cargo was valuable or an ordinary consignment. He found that the column under "Declared Value" was not filled in, except for the two sets of crosses. Because the two boxes were not filled in, he took it that no value was declared. He therefore charged the ordinary freight. If the first plaintiffs had declared the value, he would have charged double the freight and a sum for the additional insurance premium. Tam explained that he did not see nor read the invoice inside the sealed envelope. He explained that it was addressed to and was intended to be sent along with one set of the Air Waybill to the consignees for the purposes of customs clearance at destination. This evidence was confirmed by the servant of the second plaintiffs who attended at the collection at the Singapore airport and I accept the evidence. After Tam had completed the Air Waybill, he asked Ng to check through it. Ng then signed the Air Waybill. Tam then stapled the envelope containing the invoice to a set of the Air Waybill which eventually accompanied the consignment on board the airplane which carried the consignment to Singapore.

In cross-examination, Tam was referred to his instruction manual which provided that shippers must declare a value or state that no value is declared. He candidly admitted that he should have typed in "NVD", the abbreviation for "No Value Declared". But I think that it was more an admission of some fault with the benefit of hindsight. He had followed the first

plaintiffs' letter of instructions which had left the relevant column blank. I find on the evidence that the servants of the first plaintiffs had been previously told of the necessity of making a declaration of the value of the cargo if the operation of the limitation of liability provisions were to be avoided. It was their responsibility to make a special declaration of value and they had failed to do so. They had elected to ship at the ordinary freightrate and had not chosen to pay the additional freightrate for valuable cargo, in which case the defendants as the carrier would have been automatically covered for insurance to the full value of the cargo, and I regret to say that the first plaintiffs and those taking title from them must bear the consequences of losses together with the benefit of shipping at a lower rate.

A consideration of what is a "special declaration of interest in delivery at destination" requires us to look at article 22(2)(a) of the Schedule to the English Carriage by Air Act, 1961. The Article is in these terms:—

"In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination."

I was referred to *Westminster Bank Ltd.* v. *Imperial Airways, Ltd.*[1] In that case, it was a fact that the plaintiffs had made a declaration of the value of the goods; but it was made under another column. They declared under the column "Quality and nature of goods" by stating "Bar gold £9,000". There was also in the consignment note a space for the insertion of a figure for the value of insurance. The space was labelled "Special declaration of value for insurance by carrier". That space was not filled in. Adjacent to that space there was another space labelled "Special declaration of value at delivery". That space was blacked out and evidence was tendered to the effect that Imperial Airways would in any case refuse to accept any special declaration of value at delivery. Upon those exceptional facts, it was held that the plaintiffs had not made a special declaration nor paid any supplementary rate within article 22(2) of Schedule 1 of the English Carriage by Air Act, 1932 which was repealed by the 1961 Act. I am not unaware that the decision was *obiter* and that it was entirely unnecessary for the learned Judge to have answered the question. I am also not unaware that under the 1932 Act, "the value at delivery" was referred to whereas in the 1961 Act, one has to look at "the interest in delivery at destination". Notwithstanding these features, the authority is a good guide on what would amount to a special declaration and a supplementary sum. An express declaration of value in another box was held insufficient to amount to a special declaration. Plainly, there was no intention to do so. It follows that in this case a blank declaration in the appropriate box, notwithstanding the value stated in an invoice in a sealed envelope which was not seen by any employee of the defendants, cannot possibly amount to "a special declaration of interest in delivery at destination". And I find as a fact that supplementary sum was not paid or offered to be in this case.

There remains to be dealt with the allegation that on the facts, particularly Tam's completion of the Air Waybill for the first plaintiffs over the defendant's counter, the defendants had become the agents of the first plaintiffs. I do not accept this submission as I do not think that this court should readily infer any relationship of a principal and agent in a commercial context such as this, in which the rights and obligations are set out within the perimeters of an international convention relating to the carriage of goods by air. On the facts in this case, Tam had assisted in the completion of the Air Waybill as time was pressing. The aircraft due to carry the consignment was almost arriving in Hong Kong when Ng appeared at the defendants' counter with the HACTL receipt for the consignment. He had to calculate and type in the freight and other particulars onto the Air Waybill out of the written instructions of the first plaintiffs. The accuracy of these insertions were affirmed by Ng who signed the Air Waybill on behalf of the first plaintiffs. In these circumstances, I am unable to infer any agency. In any case, I also find that Tam had not been negligent in way of any of the particulars of negligence as alleged by the plaintiffs.

For these reasons, the claims of the plaintiffs are dismissed.

After delivering the above judgment, counsel for the defendants submitted on the question of costs. I was told that on September 18, 1981 the defendants informed the plaintiffs of their payment into court the sum of $253.74 and that defendants had to fly out Tam to give evidence.

Mr. Liu suggested that perhaps no travel expenses were incurred, seeing that the defendants were operating an airline. I accordingly ordered that the plaintiffs pay the defendants the costs of the proceedings calculated for work done on and after September 18, 1981. Defendants may be reimbursed the travel (if any) and hotel expenses of their witness. There will be payment out of $253.74 to the defendants by way of set-off against the costs due to them.

*Claim dismissed.*

Solicitors: *Lim Ganesh & Liu; Ho & Wee.*

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## SYSTEM FURNITURE CO. PTE. LTD. v. ANTHONY G. WIBISONO

**[O.C.J. (Lai Kew Chai J.) September 26, 1985]**

**[Singapore – Suit No. 3855 of 1980]**

*Contract – Oral agreement to decorate and furnish flat – Breach – Defendant denies concluded contract – Claim for damages – Interest.*

The plaintiffs carry on the business of interior decorations and furniture manufacturing. They are claiming damages in the sum of $61,650, interest and costs against the defendant for breach of an oral agreement entered into on July 9, 1980 to decorate and furnish the defendant's flat (hereinafter known as "the flat"). The defendant denies that there is any concluded contract and also disputes the quantum of damages.

**Held**: (1) on the evidence, the learned judge found that the parties had orally concluded a contract in the course of their meeting on July 9, 1980;

(2) the plaintiffs have incurred the items of damages claimed, they had given ample notice to the defendant and the sale of the manufactured items was at the best available price in all the circumstances of the case. Accordingly, there will be judgment for the plaintiffs in the sum of $61,650 and interest thereon at the rate of 12% p.a. calculated from December 1, 1980 on which date the plaintiffs ought to have received their payment.

CIVIL SUIT.

*Charles Ng* for the plaintiffs.

*Peter Moe* for the defendants.

*Cur. Adv. Vult.*

**Lai Kew Chai J.** : The plaintiffs, who carry on the business of interior decorations and furniture manufacturing, are claiming damages in the sum of $61,650, interest thereon and costs against the defendant for breach of an oral agreement entered into on July 9, 1980 under which the defendant had employed the plaintiffs to decorate and furnish the flat known as No. 1803, 17th Floor, Lucky Towers, Singapore (hereinafter referred to as "the flat").

The defendant denies there was a concluded contract and also disputes the quantum of damages.

It is common ground that the flat, which is four room, was bought by the defendant's wife sometime in June 1980 from one Andy Ong who had before the sale engaged the plaintiffs to renovate the flat. After the purchase by the defendant's wife, Andy Ong in late June 1980 arranged a meeting between Richard Goh Soo Hock, the executive director of the plaintiffs, and the defendant with a view to decorating and furnishing the flat. They met at the flat. Also present were the defendant's wife, Andy Ong and one Aron, a Malay draftsman of the plaintiffs who had left the employ of the plaintiffs about three years ago and who, inspite of attempts by the plaintiffs, was untraceable and unavailable to give evidence.

Richard Goh said in evidence that the plaintiffs had by the time of the meeting renovated some 8 or 9 apartments in Lucky Towers. So he brought along the plans of those units. photographs and brochures of two show flats which the plaintiffs had decorated for the developers, which the defendant studied. He also showed the defendant samples of the carpets, wall coverings and fabrics. For some two hours, the defendant and Richard Goh went over every individual area of the flat and discussed the requirements of the defendant which Richard Goh noted on the plan of the flat. After the meeting, the party adjourned for tea at the Marco Polo Hotel. In the course of tea, Richard Goh mentioned that the plaintiffs had renovated a flat of one Robert Heng who the defendant said he knew. At defendant's request Richard Goh phoned Robert Heng and arranged for an inspection of Robert Heng's flat at Lucky Towers. The party then went to the flat known as No. 503, 4th Floor, Lucky Towers. They were there for almost two hours. In the course of the inspection, the defendant indicated that he wished to adopt some of the works in Robert Heng's flat such as the design of the ceilings, the marble floor, the demolition of the store room walls, the bar counter and the room dividers of the living/dining room. He also liked